## REMARKS

Amended claims 71, 72, 76 – 79 and 84 – 91 are presented for examination on the merits. Claim 1 – 70, 73 – 75, 80 – 83 and 92 – 119 are canceled and claims 120 – 148 are withdrawn from consideration.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

### *Rejections Under 35 U.S.C. §103*

The Examiner has rejected claims 71, 72 and 76 – 81, 83 – 100, 103, 107, and 115 – 119 over Schultz (U.S. Patent Publication 2002/00822779), in view of Tu (English Language Abstract of CN 1113773). In addition, the Examiner rejects claims 101-102 over Schultz, in view of Tu as applied to claims 71-81, 83-100, 103, 107, and 115-119, and further in view of Benford (U.S. Patent 5,110,593).

A proper rejection for obviousness under §103 requires consideration of two factors:

> (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition, or device, or carry out the claimed process and (2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success. Both the suggestion and the reasonable expectation of success must be founded in the prior art, not in the applicant's disclosure.

*In re Vaeck,* 947 F.2d 488, 493, 20 USPQ2d 1438 (Fed. Cir. 1991) [emphasis added].

Applicants submit that the present invention is not obvious over the cited references within the meaning of section 103. The present invention discloses a composition that is not therapeutically used for treating skin diseases, such as acne, as taught by the cited references. As is clearly recited in the rejected claims, the claimed composition is a cosmetic composition. Cosmetic compositions are structurally distinct from therapeutic compositions and include lipstick, glow glitter, eye shadow or rouge. One of ordinary skill in the art would

not be motivated to combine a therapeutic composition with a cosmetic composition to treat any dermatological ailments.

In support of the proposition that cosmetic compositions are structurally distinct from pharmaceutical compositions, applicants attach the Declaration under Rule 132 of one of the inventors Dr. Palpu Pushpagandan. Moreover, as elaborated in the Declaration, one of skill in the art would not have been motivated by the cited references to arrive at the presently claimed invention.

In conclusion, Schultz, Tu and Benford are not patentability-defeating references since they all fail to disclose the claimed cosmetic composition which comprises "an herbal colourant isolated from a species belonging to the genera of the family *Boraginaceae*." Accordingly, the Examiner has failed to make a case of *prima facie* obviousness. Applicants, therefore, respectfully request that the above rejection be withdrawn.

## CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

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